



Commonwealth of Massachusetts

State Ethics Commission

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PUBLIC EDUCATION LETTER^{1/}

Dear Mr. Hartnett:

As you know, the State Ethics Commission has conducted a preliminary inquiry into allegations that you violated the state conflict-of-interest law, G. L. c. 268A, by asking someone with whom you had official dealings to provide employment help for a close friend of one of your daughters. Based on the staff's inquiry (discussed below), the Commission voted on August 8, 2002, that there is reasonable cause to believe that you violated the state conflict-of-interest law, G.L. c. 268A, § 23(b)(2) and (3).

For the reasons discussed below, the Commission does not believe that further proceedings are warranted. Instead, the Commission has determined that the public interest would be better served by bringing to your attention, and to the public's attention, the facts revealed by the preliminary inquiry, and by explaining the application of the law to the facts, with the expectation that this advice will ensure your understanding of and future compliance with the conflict-of-interest law. By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and law discussed below. The Commission and you have agreed that there will be no formal action against you in this matter and that you have chosen not to exercise your right to a hearing before the Commission.

I. Facts

In July 1997, you became the Commonwealth's Personnel Administrator in charge of the Human Resources Division ("HRD"). Your appointing authority for G.L. c. 268A purposes was the Secretary of the Executive Office for Administration and Finance ("A & F"), under whose jurisdiction HRD falls. In spring 2002, you retired from the HRD.

The HRD administers a civil service merit system to fill certain state and municipal positions. One HRD office, the Office of Employee Relations, is responsible for state employee union issues, such as collective bargaining contract negotiations, benefits and other contract interpretations, and grievances.

Your duties as the Personnel Administrator and head of HRD included meeting with union leaders to address union issues. You also served on several collective bargaining teams and were the chief negotiator for the state when you did so. About 30% of your time as Personnel Administrator was devoted to union issues.

The National Association of Government Employees ("NAGE") is a union representing over 100,000 government employees nationwide and about 12,000 Massachusetts state employees; its headquarters are in Quincy, Massachusetts. NAGE is one of the two largest unions with which HRD has official relations. At all times relevant, Kenneth T. Lyons was the NAGE president.

When you first became the Personnel Administrator in July 1997, you arranged to meet with the leader of each union representing state employees, to build a relationship with them. When you told your NAGE contact that you wanted to meet with NAGE's president, you were told that it was Lyons's longstanding custom to conduct NAGE business over lunch at Anthony's Pier 4 restaurant when he was in Boston. Thus, whenever

you and Lyons met in Boston to discuss union business or any matters of interest to NAGE, you did so over lunch at Pier 4. These frequent meetings led to your developing a cordial business relationship with Lyons.

As the Personnel Administrator, you had official responsibility for contract extensions and contract negotiations concerning major contracts between NAGE and the Commonwealth. These contracts covered the state's clerical and support, trades and crafts, and professional staff employees. Lyons was not usually involved in contract negotiations. Occasionally, however, when the NAGE negotiating team needed some help, Lyons would become personally involved or contact you on behalf of NAGE.

In or about early 2000, you and Lyons met to discuss union business over lunch at Anthony's Pier 4. During that lunch, you told Lyons that your daughter's close friend was interested in a job as a police officer. You observed that it was difficult to become a municipal police officer unless one were a veteran or had scored high on the civil service exam. Lyons told you that the young man could have a job at the International Brotherhood of Police Officers Union, but you declined that offer, stating that the young man wanted to be in law enforcement. Lyons told you that he would personally contact a certain Boston University vice president to find out if there were any employment opportunities with the university's police department. The Boston University police and security officers were represented by a NAGE-affiliated union, and you knew that Lyons had contacts with police labor unions.

On or about April 18, 2000, you again met for lunch with Lyons at Anthony's Pier 4 to discuss NAGE-related matters, and your daughter's close friend's job prospects were also brought up. The Boston University vice president was also present. Knowing the dual purpose of the lunch, you brought a copy of the young man's resume with you and gave it to him. You told the vice president about the young man's interest in law enforcement, and asked him whether there were any police officer opportunities at the university. The university vice president said that he would see what he could do for you.

Lyons later conveyed to the Boston University vice president that it was important to Lyons personally that everything that could be done to help in the employment matter would be done. Subsequent to this lunch, the vice president discussed the matter with the Boston University president, and according to the vice president, the president contacted the university's police chief. You received updates from both Lyons and the Boston University vice president regarding your daughter's close friend's employment prospects. Several months later, Boston University offered the young man a police dispatcher job for a probationary period, which he declined.

II. Discussion

As the Personnel Administrator, you were a state employee as that term is defined in G.L. c. 268A, § 1. As such, you were subject to the conflict-of-interest law, G.L. c. 268A, generally and, in particular for the purposes of this discussion, to § 23 of that statute.

A. Section 23(b)(2)

Section 23(b)(2) prohibits any state employee from knowingly, or with reason to know, using or attempting to use his official position to secure for himself or anyone else an unwarranted privilege of substantial value not properly available to similarly situated individuals. There is reasonable cause to believe that you violated § 23(b)(2) by asking Lyons for help to get your daughter's close friend a job.

The employment help for your daughter's close friend was a favor and a special benefit and, as such, a privilege. This privilege was of substantial value because Lyon's ability to get inside help from the university's vice president and then president, which resulted in an interview and a job offer, was worth more than \$50, even though the job offer was ultimately rejected. In addition, the privilege was not otherwise properly available to similarly situated individuals: i.e., others seeking employment with the university's police department.

Finally, by soliciting and accepting help from Lyons under the totality of the circumstances described above, you knew or had reason to know that you were using your official position as Personnel Administrator to obtain an unwarranted privilege. This conclusion is based on the following factors:^{2/}

- (1) you were in charge of HRD and, in that capacity, officially responsible for contract negotiations and other matters involving NAGE and the Commonwealth;
- (2) you knew or had reason to know, based on your relationship with Lyons, that your raising the subject of your daughter's close friend's desire to find a law enforcement job, and your noting how difficult it was to find such jobs, would result in Lyons's offering assistance in that regard;
- (3) you knew or had reason to know that Lyons, in responding to your statements, would be likely to go to considerable lengths to help you primarily because of the authority that you could exercise as Personnel Administrator regarding NAGE;
- (4) you accepted Lyons's arranging a business lunch at Anthony's Pier 4, where you met with Lyons and a university vice president who regularly had police union business with Lyons. At this meeting, and with Lyons present, you asked the university vice president whether there were any opportunities to become a police officer at Boston University and you gave him your daughter's close friend's resume;
- (5) you knew or had reason to know that the university vice president was likely to go to considerable lengths to help you because he knew it was important to Lyons that he help you, and the university had significant business with Lyons and NAGE. Therefore, you knew or had reason to know that any job assistance that your daughter's close friend received from the university would be significantly influenced by your being the Personnel Administrator;
- (6) you had these discussions about employment help for your daughter's close friend in the context of a business lunch with Lyons, the NAGE president, while you were acting in your capacity as Personnel Administrator; and
- (7) during the pendency of these discussions, Lyons had and would continue to have interests in HRD matters that potentially had a significant impact on NAGE business.

Accordingly, there is reasonable cause to believe that you violated G.L. c. 268A, § 23(b)(2).

B. Section 23(b)(3)

There is also reasonable cause to believe that you violated § 23(b)(3) by intermixing your public and private dealings with Lyons. Section 23(b)(3) prohibits a state employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, with knowledge of the relevant facts, to conclude that anyone can improperly influence or unduly enjoy his favor in the performance of official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence. This subsection's purpose is to deal with appearances of impropriety and, in particular, appearances that public officials have given certain people preferential treatment. Section 23(b)(3) provides that the appearance of impropriety can be avoided if the public employee discloses in writing to his appointing authority all of the relevant circumstances which would otherwise create the appearance of conflict. The appointing authority must maintain that written disclosure as a public record.

When you took official actions of interest to Lyons and/or NAGE at or around the same time that you solicited and received the above-described personal favor from Lyons, you knew or had reason to know that you were acting in a manner that would cause a reasonable person knowing all of the facts to conclude that Lyons and/or NAGE could unduly enjoy your favor or improperly influence you in the performance of your official duties as Personnel Administrator in violation of § 23(b)(3). You made no disclosure to dispel that appearance of impropriety.

The law's provision for advance written disclosure to dispel the appearance of a conflict of interest is not a technical requirement. It causes the public employee to pause and reflect upon the appearance issue and decide whether to abstain or, notwithstanding the appearance issue, to participate after making a timely written disclosure. Importantly, if the public employee chooses to participate, the written notice also gives the appointing authority the opportunity to consider the appearance issues raised and to take appropriate action.³³

In this case, while a timely, full disclosure would have resulted in your complying with § 23(b)(3), you would still have been in violation of § 23(b)(2). This is because the use of one's position to secure unwarranted privileges of substantial value for yourself or others always violates the law, regardless of any relevant public disclosure.

C. General Guidance

The Commission recognizes that a public employee may make inquiries or take actions concerning prospective employment opportunities without violating the conflict-of-interest law. *Commission Advisory No. 14* (“Negotiation for Prospective Employment”) states:

To comply with § 23(b)(2), a public employee must avoid misusing his or her position to exploit the vulnerability of persons or organizations that are dependent on the public employee’s official actions. A public employee must, therefore, exercise caution when pursuing prospective employment with persons or organizations with matters pending within the official responsibility of the employee.

Thus, for example, a public employee may make general inquiries regarding prospective employment for himself (or for his family or friends) with persons who have or would be expected to have matters under his jurisdiction. Such inquiries, however, must be for information regarding possible employment prospects or suggestions that the public employee (or person on whose behalf he made the inquiry) might pursue. In addition, the public employee should not intermingle the private request for employment information with discussion or negotiation regarding public business. When a public employee is in doubt about how § 23(b)(2) would apply to his or her specific situation, particularly when seeking information from someone with whom he or she is discussing official business, the public employee should call the Commission for guidance in advance.

In our view, your initial statements to Lyons regarding your daughter’s close friend’s employment were not general inquiries for information. Rather, we infer from your stating to Lyons how difficult it was to obtain such a job that you were asking for his personal intervention and not just some ideas or leads. Indeed, Lyons appears to have reached the same conclusion because he immediately offered to give the young man a union job and, after you declined that, he told you that he would personally contact a university vice president who might be able to help. Significantly, he did not just give you the information on which to act.

Even if we accepted your view that the initial discussion was informational, your subsequent acceptance of a meeting with Lyons and the university vice president arranged by Lyons can hardly be viewed in that light. The meeting set up by Lyons confirms that you knew or had reason to know that Lyons was likely to go to considerable lengths to respond to your request, and in fact did so by inviting the university’s vice president to lunch with you, and by informing the vice president that it was important to Lyons personally to help your daughter’s close friend get a job. The Commission believes that Lyons took those actions primarily because of your position as Personnel Administrator, and not because of any personal relationship that he shared with you. You also knew or had reason to know that this second meeting was constructed by Lyons in such a way that one would expect the university vice president to do everything he could to have the university give the young man a job. And you knew or had reason to know that all of this private assistance was happening, at least in substantial part, because of your Personnel Administrator position.

Finally, when a public employee makes an employment inquiry or takes an action regarding prospective employment opportunities that complies with § 23(b)(2), the employee must still be mindful of § 23(b)(3). When a public employee contacts someone who “is a party to, or otherwise has an active interest in” a particular matter in which the employee is engaged, he or she should file a disclosure of the relevant facts prior to acting as a public employee on any matter of interest to that party. As the Commission noted in *Advisory No. 14*, “[I]t is the act of having contacted the interested person or organization for possible future employment, while simultaneously having responsibility for a governmental matter in which the person or organization is interested, that triggers the disclosure requirements under § 23.”

III. Disposition

The Commission is concerned that the misuse of one’s official position or the failure to disclose relationships when appearances so require can significantly undermine the public’s confidence in government. On the most serious level, such actions may raise the concern that the public official who has obtained a private benefit will not aggressively protect the public’s interests when dealing officially with the party who provided that benefit. In such situations, the Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$2,000 for each violation.

In this case, however, the Commission chose to resolve this matter with a public education letter rather than imposing a civil penalty because it has not previously addressed this issue in a specific case. The Commission also believes that the public interest would best be served by providing educational guidance on the present facts, rather than seeking a civil penalty.

Based upon its review of this matter, the Commission has determined that your receipt of this public educational letter should be sufficient to ensure your understanding of and future compliance with the conflict-of-interest law.

This matter is now closed.

DATE:December 3, 2002

^{1/}The Commission has previously referred to similar letters as Public *Enforcement* Letters. Since the primary purpose of such letters, as noted in the Disposition section of the letter, has always been to provide “educational guidance,” the Commission has decided to call these letters Public *Education* Letters.

^{2/}The conclusion in this particular case that there was a use of position to obtain an unwarranted privilege is based on the cumulative effect of all the factors cited. No one factor is determinative. The Commission could reach the same conclusion in another case, even in the absence of one or more of these factors. Thus, each situation must be evaluated case-by-case, based on its own particular factors.